

## Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Agency name, Jurisdiction]

The following template is submitted by **Slovenian Competition Protection Agency, Slovenia** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

### I. Introduction

*The Slovenian Competition Protection Agency (CPA) is an authority with the powers of enforcing competition rules. It was established in 2013 as the legal successor of the former Slovenian Competition Protection Office and is now organized as an independent administrative authority, responsible for the enforcement of antitrust and merger control rules in Slovenia.*

*More information about the CPA are available on the CPA [website](#) .*

### II. Laws, Regulations, and Policies relevant for the implementation of the CAP

*The Constitution of the Republic of Slovenia, hierarchically the highest norm in Slovenia, guarantees in its Article 74 free economic initiative, which means that individuals can freely decide to pursue economic activities in the market. In doing so, they are allowed to operate only in one of the legally available forms and in accordance with the public benefit. Secondly, individuals must respect competition when acting in the market. According to this provision, unfair competition practices and practices which restrict competition in a manner contrary to the law are prohibited.*

*The first Slovenian Competition Act came into force on 17 April 1993 which laid down the foundations of the implementation of competition law in Slovenia. Following the process of accession to the European Union, a new competition law was adopted in 1999 and 2008, the latest has been amended several times since then.*

*Slovenian competition law is based on EU concepts, prohibiting restrictive agreements and abuse of dominance, and requiring notification and approval of mergers exceeding annual sales. Since 2004 the CPA has had the authority to enforce Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).*

*For the purposes of this template, the CPA adopts the definitions in section A of the Annex to the ICN CAP.*

### b) Non-Discrimination

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The procedural rules in Slovenian legal system afford Persons of another jurisdiction treatment no less favourable than Persons of its jurisdiction on like circumstances. Slovenia is also party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

### **c) Transparency and Predictability**

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

In Slovenia, all regulations must be published prior to coming into force. The official publication of legal acts of the state, local government bodies, and other bearers of public authorities is regulated by the Official Journal of the Republic of Slovenia Act. According to the article 1 of the act all state regulations and other acts, if so defined by the law or other regulations, must be published in the Official Gazette of the Republic of Slovenia and is accessible online for free.

Moreover, CPA provides on its website all [legal acts in force](#) including EU rules relevant for competition.

[Decisions on restrictive practices](#) and [Notified concentrations and decisions](#) provide for accessibility of published decisions in main areas of decision making.

[The Annual report and statistical reviews](#), allowing a review of all activities are available in Slovenian language. Annual Reports in English are available [here](#) .

### **d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g.,*

*forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*

- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

*CPA informs any Person that is subject of an Investigation as soon as practically and legally permissible of that Investigation, according to the status and specific needs of the Investigation*

The CPA initiates investigations ex-officio, when it learns of circumstances from which a probability arises that a violation of the Competition Act has occurred (Article 23), or when a concentration has been notified (Article 45).

To initiate an investigation, the CPA issues an order on the commencement of procedure. This order describes the act to be investigated, the grounds for the investigation, and the provision of the Competition Act that might have been violated. A summary of the order is to be put on the CPA website (Article 24).

Upon completion of any investigation, the CPA must provide an investigation report to the investigated party, briefly describing the investigation and listing the statements given by the investigated party's personnel and the documents received during the investigation. After receiving the report, the investigated party has fifteen days to provide comments (Article 34).

Thereafter, if the CPA intends to issue a decision finding a violation of Competition Act, it must provide the parties a summary of its findings regarding relevant facts and evidence of significance. The parties can then comment on the summary pursuant to a deadline set by the CPA, which cannot exceed 45 days (Article 36). After the parties comment, the CPA decides whether more investigation is necessary.

Slovenian Law distinguishes two procedures to be followed in case of violation of antitrust rules. In the administrative procedure, the CPA assesses restrictive practices and may issue a decision establishing the existence of an infringement of antitrust rules and require the Person concerned to bring such infringement to an end, may accept commitments with the decision, or may issue an order of termination if no infringement is found or if specific circumstances indicate that the procedure would not be reasonable.

In the minor offence procedure, the CPA assesses liability for a minor offence and imposes the fine.

In case the breach of competition rules constitutes a criminal offence, it may be prosecuted by the public prosecutor in criminal proceedings before the competent court.

### **e) Timing of Investigations and Enforcement Proceedings**

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

Generally, the administrative procedure rules provide that a proceeding should be run “quickly, with the lowest cost possible, and the shortest delay for parties and other persons involved in the proceedings, but in such manner that everything needed for the right assessment of facts is obtained and that the rights and legal benefits of the parties are secured, resulting in a lawful and rightful decision.”

In antitrust matters, The Competition Act provides for a two years non-mandatory statute of limitations in the administrative procedure (Article 37(2)). Concerning the proceedings for the imposition of fines, the Competition Act provides for a five year statute of limitations from the day the conduct occurred, or ten years to the completion of court proceedings (Article 75).

In merger control the filing of a notification with the CPA is mandatory in cases where the applicable jurisdictional thresholds have been met. A merger notification has to be submitted to the CPA no later than 30 days after the conclusion of the agreement, the announcement of a public bid or the acquisition of the controlling interest (whichever occurs first).

In the event the concentration does not raise serious doubts as to the compatibility with the Slovenian Competition Act, the CPA must issue its decision within 25 working days of receipt of a complete notification. Once the CPA has initiated Phase II, it must issue a decision within 60 working days from initiating such proceedings.

### **f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The Competition Act contains several protections for undertakings and persons during the course of the investigation. First, the CPA must protect trade secrets and other confidential information if the documents are known to a limited number of people, disclosure would cause substantial damage, and a non-confidential version is submitted when requested by the CPA (Article 29).

Second, the CPA cannot seize privileged communications (Article 32). Moreover, a person who has provided information can request that his identity be protected, if it is likely that disclosure may cause significant damage, and if that person also provides a version of documents that omits disclosure of his identity (Article 17). Besides, parties have the right to review case file documents (with some exclusions, such as internal office documents, trade secrets, and draft decisions) and make copies at their own expense (Article 18).

Finally, if the summary of relevant facts includes data which constitutes trade secrets, that data will be deleted from the summary served on other participants in the investigation.

#### **g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

In CPA decisions are jointly taken by the CPA Council (in the administrative procedure) or by a panel, appointed by the Council, authorized to act in a minor offence procedure.

The Civil servants' code of conduct represents the basic guideline to deal with conflicts of interest. Accordingly, a civil servant must perform public duties on the basis and within the limits of the Constitution, ratified and published international treaties, laws and regulations, and within the limits of this Code and respect for human dignity.

The civil servant shall also act in a politically neutral and impartial manner. A public official is expected to perform tasks of a professional, prudential, impartial and qualitative nature, taking into account only the public interest and the specific circumstances of the case.

#### **h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

When the CPA intends to issue a decision finding a violation of Competition Act, it must provide the Persons subject to Enforcement Proceeding a summary of its findings regarding relevant facts and evidence of significance. The Persons can then comment on the summary pursuant to a deadline set by the CPA, which cannot exceed 45 days (Article 36). After the parties comment, the CPA decides whether more investigation is necessary.

Both in administrative and fines procedures, the Persons have a right to be heard. Apart from the summary of findings and relevant facts, they are, upon request, granted access to the file to enable the effective exercise of the right of defense.

The right to access the file is enshrined in Article 18 and is applicable to all procedures before the CPA as well as, in accordance with Article 60, in judicial proceedings before the court.

#### **i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

The Person has a right to legal representation throughout the entire proceeding.

In the course of dawn raids Persons are assisted by legal counsel, however, CPA is not obliged to wait for their arrival and is entitled to start an inspection without his or her presence.

The CPA recognizes the protection of legal professional privilege, as defined under the Competition Act (Article 32). The Act considers as privileged communication all 'letters, notifications and other means of communication' between the client and his lawyer. The legal professional privilege protection might be waived by explicit request of the client.

#### **j) Decisions in Writing**

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

All final decisions of the CPA are in writing and contain all elements needed as set by Article 22, the summary of the facts in question and the statement of grounds and the instruction on legal remedies.

Decisions may include a variety of provisions, including requiring cessation of conduct [Article 37(1)]; requiring taking measures to eliminate the violations and their consequences,

including sale of activities, division of an undertaking, transfer of industrial property rights, executing licenses and other contracts, and ensuring access to infrastructure [Article 37(2)]; voiding restrictive agreements (Article 6); prohibiting abuse of a dominant position (Article 9); prohibiting concentrations (Article 50); imposing fines (Article 73); and requiring compliance reports to address obligations imposed by the order (Article 41).

The final decisions in an administrative procedure and minor offence procedure without confidential data are publicly available on the CPA's website.

#### **k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Decisions by the CPA can only be challenged in judicial proceedings. Decisions in administrative proceedings may be appealed to the Administrative court of the Republic of Slovenia; in this judicial protection procedure the appellant cannot introduce new facts or propose new evidence. The court reviews the CPA's decision within the reasons stated in the appeal concerning the facts as well as the law, while ex officio reviewing certain essential procedural violations, in accordance with the Administrative Disputes Act. In certain cases, a further extraordinary legal remedy based on the points of law - revision to the Supreme Court - is possible.

Decisions of the CPA in minor offence proceedings can be challenged in accordance with Minor Offences Act, with a request for judicial protection before the Local Court in Ljubljana. Decisions of the Local Court can be appealed before the High Court in Ljubljana.